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No. 94-1836

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, KENNETH T. LYONS, ROBERT FRIEHL, GRACE MUCCI, JOHN DONEGAN, PATRICIA BARBARO, KENNETH HOWE, JAMES FARLEY, KENNETH H. KNIGHT, AND DREW REARDON,

Petitioners,

v.

COMMONWEALTH OF MASSACHUSETTS, SECRETARY OF THE EXECUTIVE OFFICE OF ADMINISTRATION AND FINANCE, COMPTROLLER OF THE COMMONWEALTH OF MASSACHUSETTS, GROUP INSURANCE COMMISSION, BOARD OF REGENTS OF HIGHER EDUCATION, HIGHER EDUCATION COORDINATING COUNCIL,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Judicial Court of Massachusetts

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PETITIONERS' REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES . . . . . (ii)

ARGUMENT 1

1. Respondents Exaggerate the Deference Due the Decision Below 2

2. Respondents' Reserved Power Analysis Is Flawed 4

3. The Supreme Judicial Court's Reserved Power Holding Conflicts with Rulings of Other Courts 7

CONCLUSION 10

TABLE OF AUTHORITIES

Page(s)

CASES:

Anderson v. Board of Selectment of Wrentham, 406 Mass. 508, 548 N.E.2d 1230 (1989) 7

Appleby v. City of New York, 271 U.S. 364 (1926) 3

Atlantic Coast Line R. Co. v. Phillips, 332 U.S. 168 (1947) 3

Baltimore Teachers Union v. Mayor and City Council of Baltimore, 6 F.3d 1012 (4th Cir. 1993), *cert. denied*, 114 S. Ct. 1127 (1994) 8

Boston Teachers Union, Local 66 v. School Comm. of Boston, 386 Mass. 197, 434 N.E.2d 1258 (1982) 5-6

Carlstrom v. State, 103 Wash. 2d 391, 694 P.2d 1 (1985) 9

Commonwealth v. Labor Relations Comm'n, 404 Mass. 124, 533 N.E.2d 1326 (1989) 4, 6

Coombes v. Getz, 285 U.S. 434 (1932) 3

General Motors Corp. v. Romein, 503 U.S. 181 (1992) 2

Greenwood v. Union Freight R. Co., 105 U.S. 13 (1881) 8

Hale v. State Board of Assessment and Review, 302 U.S. 95 (1937) 3, 4

Indiana ex rel. Anderson v. Brand, 303 U.S. 95 (1938) 2

Irving Trust Co. v. Day, 314 U.S. 556 (1942) 2

Larson v. South Dakota, 278 U.S. 429 (1929) 3

School Comm. of Medford v. Labor Relations Comm'n, 380 Mass. 932, 401 N.E.2d 847 (1980) 6

School Comm. of Newton v. Labor Relations Comm'n, 388 Mass. 557, 447 N.E.2d 1201 (1983) 6

STATUTES, REGULATIONS AND LAWS:

Mass. Gen. L. ch. 150E, § 7(d) 4

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PETITIONERS' REPLY BRIEF

ARGUMENT

In their Brief in Opposition, respondents effectively concede that, if the requirement that the Commonwealth fund 90% of its employees' health benefits was an enforceable term of the collective bargaining agreements, a decision upholding the abrogation of that term against a Contract

Clause challenge would be contrary to the weight of authority in other state courts, in the federal courts of appeals, and, indeed, in the Supreme Judicial Court of Massachusetts itself. *See* Br. in Opp. at 13-14 & n.7. Thus, respondents rest their opposition on the argument that this Court should defer to the Supreme Judicial Court's determination that the state had reserved to the legislature the authority to alter the level of its health benefit contribution at will, despite the clear terms of the collective bargaining agreements. Respondents' arguments ignore compelling indications that no such power was reserved, and gloss over the conflict between the Supreme Judicial Court's reserved power analysis and that of other courts.

1. Respondents Exaggerate the Deference Due the Decision Below.

Respondents' suggestion that the Court defer to the Supreme Judicial Court's resolution of the reserved power issue overlooks this Court's repeated insistence on its own obligation of independent review of such issues in Contract Clause litigation arising in the state courts. As the Court pointed out in its most recent discussion of this question, "ultimately we are 'bound to decide for ourselves whether a contract was made,'" as the issue is a federal question. *General Motors Corp. v. Romein*, 503 U.S. 181, 187 (1992) (quoting *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938), and citing *Irving Trust Co. v. Day*, 314 U.S. 556, 561 (1942)).

Romein follows a long line of decisions by this Court emphasizing that, in Contract Clause cases, "this court will give careful and respectful consideration and all due weight to the adjudication of the state court, *but will determine independently thereof* whether there be a contract, the

obligation of which is within the protection of the contract clause, and whether that obligation has been impaired; and, likewise, *will determine for itself* the meaning and application of state constitutional or statutory provisions said to create the contract or by which it is asserted an impairment has been effected." *Coombes v. Getz*, 285 U.S. 434, 441 (1932) (emphasis added). As Chief Justice Taft observed, "we cannot perform our duty to enforce the guaranty of the federal Constitution as to the inviolability of contracts by state legislative action unless we give the questions independent consideration." *Appleby v. City of New York*, 271 U.S. 364, 380 (1926). Thus, the Court "must . . . not accept the present conclusion of the state court without inquiry." *Id.*; *accord*, *Larson v. South Dakota*, 278 U.S. 429, 433 (1929).

The authorities cited by the respondents are not to the contrary. In each, this Court undertook a careful, independent review of the existence and terms of the contract, and either accepted or rejected the state court's determination based on its own analysis of the issue. [1] Such a review, under the circumstances here, reveals that the Supreme Judicial Court's reserved power analysis is, indeed,

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[1] For example, in *Hale v. State Board of Assessment and Review*, 302 U.S. 95 (1937), this Court examined at length the question whether the appellants had a contractual exemption from income taxes imposed by the state, and based its agreement with the state court that the contract did not provide such an exemption not only on a searching examination of precedent, but also on the maxim that exemptions from taxation are to be narrowly construed — a principle obviously inapplicable here. *Atlantic Coast Line R. Co. v. Phillips*, 332 U.S. 168 (1947), turned on the same points. Neither mandates uncritical acceptance of a state court's conclusions as to the existence or terms of a contract in a case raising a Contract Clause claim.

"manifestly wrong." *Hale v. State Board of Assessment and Review*, 302 U.S. 95, 101 (1937).

2. Respondents' Reserved Power Analysis Is Flawed.

Respondents' contention that the legislature had reserved the authority to alter the collective bargaining agreements' provisions regarding the amount of health insurance contributions is not based on legislation that clearly and unmistakably reserves that right. Rather, respondents rely on a statute that says only that the amount of such contributions is to be specified in annual appropriations legislation. Respondents further assert that because this statute is not mentioned in Mass. Gen. L. ch. 150E, § 7(d), which lists statutes that are "subordinated" to collective bargaining agreements, the statute, and not the collective bargaining agreement, must prevail in the event of a conflict. Br. in Opp. at 7-8. [2]

What respondents, and the court below, overlook is that there is *clearly no conflict* between the collective bargaining agreements and the statute, and thus no issue as to which must "prevail." A conflict would, of course, be presented if the collective bargaining agreements purported

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[2] Mass. Gen. L. ch. 150E, §7 (d) provides, in pertinent part, that "[i]f a collective bargaining agreement reached by the employer and the exclusive representative contains a conflict between matters which are within the scope of negotiations pursuant to section six of this chapter and . . . any of the following [listed] statutory provisions . . . , the terms of the collective bargaining agreement shall prevail." As respondents note, the Supreme Judicial Court has held that where there is a conflict between a collective bargaining agreement and the terms of a statute *not* listed in § 7(d), the statute will prevail. *Commonwealth v. Labor Relations Comm'n*, 404 Mass. 124, 126, 533 N.E.2d 1326, 1328 (1989).

to require that the state pay 100% of the employees' health insurance costs, or that it pay less than 75%, as such an agreement would be directly contrary to the terms of the statute. Similarly, there would be a conflict between the statute and the agreements (and a clear reservation of legislative authority) if the statute said that the legislature could specify the amount of the contribution irrespective of any collective bargaining agreement.

But the statute says no such thing. It says only that the amount of the contribution is to be specified in annual or more frequent appropriations acts. There is no conflict between this *procedural* requirement and the collective bargaining agreements' *substantive* provisions specifying what the amount must be. The collective bargaining agreement, which the legislature itself ratified, simply obligates the legislature to appropriate in accordance with its terms (or to pay damages for breaching the contract).

Contrary to respondents' suggestion, this was *precisely* the holding of the Supreme Judicial Court in *Boston Teachers Union, Local 66 v. School Comm. of Boston*, 386 Mass. 197, 434 N.E.2d 1258 (1982). In that case, as in this, the governmental entity asserted that a collective bargaining agreement provision purporting to bind it to make certain expenditures was not, and indeed could not be, binding on it because of a statutory provision stating that expenditures could be made only pursuant to appropriations legislation. Even though this statute was *not* included in the list of those "subordinated" to collective bargaining agreements, the Supreme Judicial Court enforced the agreement, finding no conflict between its terms and the requirement that expenditures be established in appropriations legislation. Indeed, the court held that the collective bargaining agreement, once it is ratified,

"mandates the appropriation" by the legislative body of the required amounts as long as the agreement is in force. *Id.* at 210, 434 N.E.2d at 1266. [3]

The Supreme Judicial Court applied the same principle in *School Comm. of Medford v. Labor Relations Comm'n*, 380 Mass. 932, 933, 401 N.E.2d 847, 848 (1980), in which it recognized that health insurance contributions were a mandatory subject of collective bargaining, "and that the existence of the statutory scheme for group insurance embodied in G.L. c. 32B, §§ 7 and 7A, does not exempt the school committee from bargaining over the topic, *despite the fact that an agreement to increase the employer's share of premiums may require subsequent legislative action by the city of Medford"*(emphasis added).

Similarly, in *Commonwealth v. Labor Relations Comm'n*, 404 Mass. 124, 127, 533 N.E.2d 1326, 1328-29 (1989), the Supreme Judicial Court addressed the contention that a statute providing that the salaries of certain personnel were to be determined annually by the Commissioner of Insurance precluded collective bargaining over the amount of the salaries. The court held that the statute did not reserve the issue to the Commissioner, noting explicitly that "[t]here is no inconsistency between [the statute's] provision that salaries be determined by the Commissioner of Administration, and the requirement that, before doing so, the Commissioner must bargain to resolution or impasse."

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[3] Respondents' assertion that Boston Teachers did not address "whether a contractual obligation existed *ab initio*," Br. in Opp. at 8, n.3, overlooks that the court in that case considered and rejected the contention that the statute in question "precludes the city from entering into any contract for the future payment of monies in excess of appropriations." 386 Mass. at 207, 434 N.E.2d at 1264.

By the same token, in *Anderson v. Board of Selectment of Wrentham*, 406 Mass. 508, 548 N.E.2d 1230 (1989), the Supreme Judicial Court rejected the contention that a statute providing that the level of health benefit contributions for municipal employees be "determined by the governmental unit" precluded that determination from being the subject of a collective bargaining agreement. Again, the court found no inconsistency between the general procedural proposition that a level of expenditure be established by some governmental body and the proposition that that body's determination may be governed by a collective bargaining agreement it has entered into.

Moreover, the notion that the legislature is free to enact appropriations legislation specifying a level of health insurance contributions different from that established in a collective bargaining agreement the legislature freely ratified renders illusory the requirement — reiterated by the Supreme Judicial Court in the opinion below — that the state must bargain with its employees over the amount of insurance contributions. As the Supreme Judicial Court recognized in *Anderson*, *supra*, "[s]uch a practice would render the bargaining process an empty formality. 'We do not attribute to the Legislature an intention to pass a largely ineffective collective bargaining statute . . . .'" *Id.* at 512, n.8, 548 N.E.2d at 1233, n.8 (quoting *School Comm. of Newton v. Labor Relations Comm'n*, 388 Mass. 557, 566, 447 N.E.2d 1201, 1208 (1983)).

3. The Supreme Judicial Court's Reserved Power Holding Conflicts with Rulings of Other Courts.

The reliance of respondents and the court below on reserved power as an excuse for disregard of the collective

bargaining agreement thus finds no support either in the terms of the statute supposedly embodying the reservation or in the prior rulings of the court. More significantly for this Court's determination whether to exercise its discretion with respect to the granting of a writ of certiorari in this case, the Supreme Judicial Court's willingness to infer reserved power on such a slender basis is plainly contrary both to the decisions of this Court and to recent decisions of another state supreme court and a federal court of appeals.

With respect to this Court, respondents acknowledge that this Court's cases relying on reserved power have turned on the existence of an "unmistakable" reservation of rights. Br. in Opp., at 11 (citing *Greenwood v. Union Freight R. Co.*, 105 U.S. 13 (1881)). The statute relied on here, by contrast, in no way unmistakably reserves any right to alter lawful levels of contribution set in collective bargaining agreements.

As for conflicting authority in the lower courts, respondents' contention that the opinion below is not in conflict with the decision in *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012 (4th Cir. 1993), blinks reality. There, the Fourth Circuit held that a law specifically authorizing a governmental body to reduce appropriations did *not* reserve authority to reduce expenditures required by collective bargaining agreements. Respondents contend that this reservation was "nowhere near as specific" as that in this case, but provide no explanation. Br. in Opp. at 10. In fact, it is evident that the Massachusetts statute, which says nothing about any authority to reduce expenditures required by collective bargaining agreements, is *less* specific than the statute in *Baltimore Teachers*. Under the clear statement principle followed by the Fourth Circuit in *Baltimore Teachers*, the

purported reservation of authority in this case would not pass muster.

Moreover, respondents' contention that *Carlstrom v. State*, 103 Wash. 2d 391, 694 P.2d 1 (1985), presented "no issue of legislatively reserved power," Br. in Opp. at 11, n.6, is simply unfathomable. In that case, although the contract on its face provided that it would not bind "future actions of the legislature," the court rejected the contention that the legislature had reserved authority to modify material terms of the agreement. Once again, the purported reservation was *at least* as specific as that here, but it failed the clear statement test imposed by the Washington Supreme Court.

The doctrine of reserved power thus provides no basis for upholding the abrogation of the collective bargaining agreements at issue, and the conflict between the ruling below and the decisions of other courts refusing to find such a reservation absent a far more express and unmistakable reservation of power presents an issue worthy of this Court's resolution.

CONCLUSION

For the foregoing reasons, as well as those previously set forth, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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